

## REMARKS/ARGUMENTS

Pending claims 1-18, 31-34 and 36-38 stand rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 6,052,600 (Fette). Applicant respectfully traverses the rejection.

With regard to claim 1, Fette does not disclose a control unit to determine whether configuration of a portable device is desired. In this regard, the Office Action refers to column 2, lines 34-45 and Fig. 3 of Fette to support this contention. However, neither these portions nor any other portion of Fette disclose that a control unit determines whether a configuration of the portable device is desired. Instead, Fette merely discloses that a radio may send a request for information through a base station to a server. Thus, nowhere does Fette disclose a control unit to determine whether configuration of a portable device is desired.

Furthermore, the additional portions of Fette cited by the Office Action nowhere disclose that a control unit determines whether configuration of a portable device is desired. Instead these portions (including column 3, lines 31-34, column 4, lines 25-34 and column 7, lines 42-48) merely disclose that the radio is configured to operate within a network and transmit a request for information through a wireless channel, and that the request may be a message to request a software program, such as a short message service (SMS) message. Accordingly, nowhere does Fette disclose a control unit to determine whether configuration information for a portable device is desired.

Nor does Fette disclose that the control unit request configuration information in response to determining that configuration is desired. Instead, Fette merely transmits a message to a remote server. However, this message is not in response to a determination made in the control unit that configuration is desired. Nor do any of the portions of Fette cited by the Office Action disclose that configuration information is requested in response to determining in the control unit that configuration is desired. Accordingly, for this further reason, claim 1 is patentable over Fette.

For at least these reasons, claim 1 and claims 2-7 depending therefrom are patentable. For similar reasons, claim 8 and claims 9-12 depending therefrom, and claims 13 and claims 14-18, and 31-38 are also patentable.

In regard to dependent claims 2, 9 and 16, nowhere does Fette disclose that the control unit further initialize the portable device using at least a portion of the configuration information. Instead, the portions of Fette cited by the Office Action merely disclose that the portable device

may be configured using the information received. Such configuring is not the same as initializing the portable device. This is especially so, as the cited portions of Fette merely disclose configuring only a portion of the portable device, namely a reconfigurable resource.

Dependent claim 31 is further patentable, as nowhere does Fette disclose that a storage unit includes at least two regions, where the second region stores a program to request configuration information and that the second region is a protected region. First, Fette does not disclose “a program to request configuration information,” as recited by claim 31. Second, a protected region is not inherent. “In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis added). Because a memory region where a program to request configuration information (not even present in Fette) need not be a protected region, inherency has not been shown and for this further reason claim 31 is patentable.

With regard to dependent claim 32, nowhere does Fette disclose that the control unit determines whether configuration is desired by detecting a problem after an update. Instead, the cited portions of Fette merely disclose that after a configuration update occurs, the radio tests for problems. However, nowhere does Fette disclose that the control unit then determines whether configuration is desired after detection of such a problem.

With regard to dependent claim 37, the Office Action states that “the return of the radio to a previous operable state would be inherent”. Final Office Action, p. 9. However, to be inherent such operation must “necessarily flow,” as discussed above. Such reconfiguration need not necessarily occur in Fette, as the resource to be configured need not be returned to a previous operable state, nor need such a reconfigurable resource even have a previous operable state. Accordingly, for at least this reason, dependent claims 37 and 38 are further patentable over Fette.

Claim 35 stands rejected under 35 U.S.C. §103(a) over Fette in view of U.S. Patent No. 6,643,506 (Criss). Applicant respectfully traverses the rejection. With regard to claim 35, neither Fette nor Criss teach or suggest that a base station detects a problem with a portable device and if found, provides an indication to the portable device. In this regard the Office Action concedes that Fette does not teach or suggest such detecting. Nor does Criss,

instead is directed to determining an upgrade status of a portable device. Nowhere does Criss teach or suggest detecting problems in a portable device. Accordingly, claim 35 is patentable over the proposed combination.

With respect to the Response to the Amendment on page 11 of the Final Office Action, Applicant confirms that the limitation "determine whether configuration information for the portable device is desired" was intended to be added into amended claim 13.

In view of these remarks, the application is now in condition for allowance and the Examiner's prompt action in accordance therewith is respectfully requested. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 20-1504.

Respectfully submitted,

Date: 9/17/04

  
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